IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5165 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARUCH JILLA ADIVASI SEVA SANGH KELVANI MANDAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5165 of 1989

MR KS JHAVERI for the Petitioner

MR AJ DESAI, AGP for Respondent No. 1-3

MR RK MISHRA for Respondent No. 4-11

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI

Date of decision: 14/11/2003

ORAL JUDGEMENT

#. The petitioner challenges the validity of Rule-5 of the Bombay Primary Education Rules, 1949 in Schedule "F"

of the Rules on the ground that it violated the provisions of the Bombay Primary Education Act, and was unconstitutional. The petitioner also challenges the order dated 9.6.1989 at Annexure:A to the petition made by the government in its Education Department, rejecting the application of the petitioner for closure of the classes of the two schools.

#. The petitioner Trust was running educational institutions which included a college, a high school, a secondary school and a primary school, in the backward area of Bharuch District, with a view to impart education to the tribal people. Managing Committee of the Trust in its meeting dated 14th June,1987 resolved that the primary schools run by the petitioner, namely Shri M.R. Vidhyalaya and Smt. SRM Kanya Vidhyalaya may be closed in view of the government policy and the financial burden which could not be borne. It therefore applied for closure of these two schools by an application dated 30.11.1987 and a notice was given for closure as per the Rules, seeking permission to close down the primary schools with effect from June,1980. A reminder was sent to the respondent no. 2 on 1.12.'88 for permitting the closure with effect from June, 1989 since permission was not yet granted for closure from June, 1988 and the respondent no. 3, after hearing the petitioner on 28th April, 1989 sent his remarks to the Director of Primary Education, recommending the closure of these institutions. However, thereafter the respondent no. 1 made the impugned order on 9th June, 1989 rejecting the application for closure.

#. When Rule was issued on this petition, interim relief was granted on 27.9.1990 restraining the respondent nos. 1 to 3 from taking any action against the petitioner on the ground that they had wrongly closed the classes. It is stated that the classes have remained closed even since then.

#. As regards the challenge against the provisions of Rule-5 of the said Rules, the learned counsel for the petitioner submitted at the outset that, the validity of the Rule is not now questioned. Under Rule-5 of the said Rules, as it existed prior to its substitution, it was provided that the managing body of the trust or the Society should not close down a class of a school or the whole school at any time during the school year, and without giving notice in writing of its intention to do so, to the Administrative Officer, atleast six months before the date with effect from which the class or the school was proposed to be closed down. That Rule was

amended and under the the new Rule-5 which is reproduced in para-5 of the petition, it was provided that no management of a recognized private primary school shall effect any reduction in the total number of classes in the school or close down the school without prior permission, in writing, of the government. For this purpose, the management was required to make an application to the authorised officer, atleast six months before the date from which it intended to reduce number of classes or close the school, which provision was also there in the earlier Rule. It is further provided that on receipt of such application, the authorised officer should hear the management and forward the application with his remarks to the government through the Director of Primary Education. The Government was, thereafter required to make such further inquiry as it may deem necessary and decide whether the application should be granted or refused either in full of in part. This Rule, thus, not only provided a hearing at the initial stage by the authorised officer, but a consideration of the matter including a further inquiry by the State Government which was ultimately required to decide whether the application should be granted or refused. This would clearly mean that the State Government shall, atleast, in the cases where favourable report was sent by the authorised officer for accepting the application for closure, obliged to hear the applicant before taking a different view in the matter. The nature of power vested in the State Government under the said Rule clearly implies that consideration of the remarks made by the authorised officer and making of further inquiry, if it is found to be necessary would be a process which will obviously include the requirement of hearing the concerned party, especially if the State Government is inclined to take a view different from the recommendation made by the authorised officer in his remarks after hearing the applicant.

#. There is no dispute about the fact that the impugned order at Annexure:A has been made without hearing the petitioner and it is clear from the impugned order that it does not record any reasons for taking a view different from the one which was taken in favour of the petitioner. The fact that the respondent no. 3 had recommended closure of the institutions, which is mentioned in para-9 of the petition, was not disputed at any stage. In this view of the matter, the impugned order at Annexure:A cannot be sustained and is hereby set aside with a direction to the respondent no. 1 to reconsider the matter and after hearing the petitioner, take a fresh decision on the application dated 30th

November, 1987 at Annexure:B to the petition in accordance with law. Rule is made absolute accordingly with no order as to costs.

[R.K. ABICHANDANI, J.]

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